

Exhibits

TAB

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**



06-19-2002
U.S. Patent & TMO/TM Mail Rpt Dt. #26

In the Matter of trademark application Serial No.: 76326769

Filed: October 18, 2001

For the mark: L&B SPUMONI GARDENS

Published in the Official Gazette May 21, 2002.

_____X
LBSG, LLC :
Opposer, : **Notice of Opposition No.:** _____
v. :
LB Gardens, Inc. :
Applicants. :
_____X

NOTICE OF OPPOSITION

LBSG, LLC, a limited liability company, organized and existing under the laws of the state of New Jersey, located and doing business at 1 Chadwick Road, Millstone, New Jersey, 07726 (USA). Believes that it will be damaged by registration of the mark shown in Application No.: 76326769 and hereby opposes the same.

As grounds for opposition, it is alleged that;

1. Long prior to any date of first use upon which the Applicant may rely herein,

Opposer, or its predecessors in interest, adopted and used, has not abandoned, and

is still using, in commerce which may be lawfully regulated by Congress among the several states, its trademarks and servicemarks "SPUMONI GARDENS", "SPUMONI GARDENS EXPRESS" and "L&B SPUMONI GARDENS" (Opposer's trademarks and servicemarks) in connection with the advertising, promotion, offering for sale and sale of restaurant services and food in the state of New Jersey of the United States.

2. Opposer, or its predecessors in interest, has advertised or promoted its restaurant services and foods in the state of New Jersey in the United States under its trademarks and servicemarks "SPUMONI GARDENS", "SPUMONI GARDENS EXPRESS" and "L&B SPUMONI GARDENS." As a result of such advertising and promotional activities and the sale of Opposer's goods and services under these servicemarks and trademarks, Opposer's said trademarks and servicemarks has become well and favorably know and recognized as Opposer's trademarks and servicemarks, and thus identifies to purchasers and prospective purchasers a quality product and service originating with the Opposer.
3. Attached as "Exhibit A" is the documentation regarding the Opposer's trademarks and servicemarks "SPUMONI GARDENS", "L&B SPUMONI GARDENS" in New Jersey. These include:
 - Certificate of Business Name "L&B SPUMONI GARDENS" filed Sept. 12, 2001 in Monmouth County, NJ;
 - Certificate of Business Name "L&B SPUMONI GARDENS" filed August 24, 2001 in Middlesex, NJ;

- Certificate of Business Name "SPUMONI GARDENS" filed Oct. 18, 2001 in Middlesex County, NJ;
 - Certificate of Business Name "SPUMONI GARDENS" filed Oct 10, 2001 in Monmouth, NJ;
 - N.J. Trademark Reg. Num. 20901 for "SPUMONI GARDENS" dated Feb. 1, 2002; and
 - NJ Trademark Reg. Num. 20919 for "L&B SPUMONI GARDENS" dated Feb. 1, 2002.
4. Attached as "Exhibit B" is the records of the United States Patent and Trademark Office regarding Opposer's application for "SPUMONI GARDENS EXPRESS".
 5. On or about October 18, 2001 Applicant filed an Application in the U.S. Patent and Trademark Office seeking a registration on the Principle Register under the Act of 1946 for the Trademark and Servicemark "L& B SPUMONI GARDENS" in connection with "catering services and restaurant services featuring home delivery" and "pizza delivery services." Attached as "Exhibit C" is a copy of the records of the Patent and Trademark Office regarding Applicant's mark.
 6. The date of first use stated in that Application for the services and goods using the "L&B SPUMONI GARDENS" trademark and servicemark was Jan 1, 1938.
 7. Attached as "Exhibit D" is a Affidavit of Opposer's counsel, stating that her search of the New York State Department of State's website did not list any such corporation by the name "LB Gardens, Inc."
 8. Therefore, as stated in the Opposer's counsel's Affidavit, the Applicant's application contains incorrect, false, misleading an fraudulent information

regarding Applicant as no such corporation is listed with the New York State Dept. of State and this Opposition should be granted.

9. Upon information and belief the named Applicant "LB Gardens, Inc." made no use of the trademark and servicemark "L&B SPUMONI GARDENS" as a trademark or servicemark or otherwise in connection with such goods and services since 1938 (the date stated in the Application) since the company named "LB Gardens, Inc." is not listed as a New York State corporation and no record of its existence is recorded in the records of New York State's Department of State's corporate records. Therefore, the date of first use of Jan 1, 1938 as stated in the application is incorrect, false, fraudulent and misleading. Attached as "Exhibit D" is an Affidavit of Opposer's counsel stating that her computer search of the records of the New York State Department of State's website search for corporations did not reveal any such corporation named "LB Gardens, Inc."
10. Upon information and belief the Applicant stated in the application "LB Gardens, Inc.," is not the same entity as "L&B Gardens, Inc" and the date of first use stated in the application 1938 is incorrect, fraudulent and misleading since a telephone inquiry to the information specialist of the New York State Department of State's advised Opposer's counsel that the company named "L&B Gardens, Inc." was incorporated in 1969 while the date of first use stated in the application for "LB Gardens, Inc." was 1938. It is therefore Opposer's belief that the trademark application is therefore incorrect, false, fraudulent and misleading as the Applicant stated in the Application is not a valid legal entity and the date stated in the Application (1938) is thirty-one (31) years before the company "L&B

Gardens, Inc." was incorporated (1969). (See Opposer's counsel's Affidavit "Exhibit D").

11. Upon information and belief Applicant LB Gardens, Inc. made no use of the word "L&B SPUMONI GARDENS" as trademark servicemark or otherwise in connection with the services and goods as of Jan 1, 1938 the date of first use in the application.
12. Any use that Applicant LB Gardens, Inc., may have made of the word "L&B SPUMONI GARDENS" is subsequent to the Opposer's adoption of "SPUMONI GARDENS", "SPUMONI GARDENS EXPRESS" and "L&B SPUMONI GARDENS" as a trademark and servicemark by Opposer and its predecessors in interest.
13. Upon information and belief, the goods and services for which Applicant seeks to register the trademark "L& B SPUMONI GARDENS" are identical to or closely resemble the goods and services in connection with which Opposer has used its trademarks and servicemarks "SPUMONI GARDENS", "SPUMONI GARDENS EXPRESS" and "L&B SPUMONI GARDENS."
14. Applicant's purported mark "L&B SPUMONI GARDENS" is identical to the trademarks and servicemarks of Opposer "SPUMONI GARDENS", "SPUMONI GARDENS EXPRESS" and "L&B SPUMONI GARDENS."
15. The purported mark "L&B SPUMONI GARDENS" of Applicant, therefore, so resembles Opposer's trademarks and servicemarks "SPUMONI GARDENS", "SPUMONI GARDENS EXPRESS" and "L&B SPUMONI GARDENS" as to be

- likely, when used in commerce in connection with the goods and services of the Applicant, to cause confusion, or cause mistake, or to deceive.
16. Opposer has used, is presently making use in interstate commerce, and continues to expand usage of its family of marks "SPUMONI GARDENS" and "SPUMONI GARDENS EXPRESS," and "L&B SPUMONI GARDENS" as evidenced by Opposer's expansion into the Internet with its obtaining a domain name:
"WWW.SPUMONIGARDENSEXPRESS.COM"
 17. Opposer relies hereon upon its common law rights in interstate commerce and upon its New Jersey registered rights, including, but not limited to, the aforementioned trademarks and servicemarks and domain name.
 18. Upon information and belief, Applicant is not at the present time, and never has previously advertised, promoted or offered for sale or sold its products and services in the State of New Jersey in the United States.
 19. Since their initial adoption and use, Opposer has made a substantial investment in promoting its goods and services in connection with the trademarks and servicemarks "SPUMONI GARDENS", "SPUMONI GARDENS EXPRESS" and "L&B SPUMONI GARDENS" Opposer has established and continues to build extensive goodwill in connection with its goods and services under its trademarks and servicemarks.
 20. As a result of the Applicant's use of the purported mark "L&B SPUMONI GARDENS", the public is likely to be confused and deceived into the mistaken belief that the goods and services provided and advertised by Applicant are

approved, endorsed or sponsored by Opposer or associated in some way with Opposer.

21. Opposer would be injured by granting Applicant of a Certificate of Registration for the trademark and servicemark "L&B SPUMONI GARDENS" because the purported mark is so similar to the Opposer's "SPUMONI GARDENS", "SPUMONI GARDENS EXPRESS" and "L&B SPUMONI GARDENS" trademarks and servicemarks that, when used in connection with the goods and services of the Applicant, it would likely cause confusion, or to deceive and would falsely suggest a connection with Opposer. Opposer would further be injured by the granting of such registration because it would inevitably tend to interfere with the Opposer's marketing of its goods and services under its "SPUMONI GARDENS", "SPUMONI GARDENS EXPRESS" and "L&B SPUMONI GARDENS" trademarks and servicemarks.

WHEREFORE, Opposer believes and avers that it will be damaged by registration of the "L&B SPUMONI GARDENS" mark as aforesaid, and respectfully prays that its opposition be sustained and that the application for registration be denied.

The filing fee for this Opposition pursuant to 37 C.F.R. 26(a) 17 for two (2) classes at \$300 per class for a total amount of SIX HUNDRED DOLLARS (\$600) is enclosed herewith.

LBSG, LLC

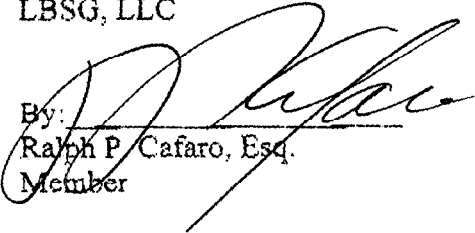
By: 

Ralph P. Cafaro, Esq.
Member

DECLARATION

Ralph P. Cafaro, Esq. declares that he is a member of LBSG, LLC, the Opposer herein, and that he is authorized to sign this Declaration on behalf of said Opposer; that he has read the forgoing Notice of Opposition, and knows the contents thereof; that the allegations are true, except for those matters stated therein to be upon information and belief, and as to those matters, he believes them to be true; and that the statements made herein were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 Title 18 of the United States Code, and that such willful false statements or the like so made may jeopardize the Opposition and/or Opposer.

LBSG, LLC

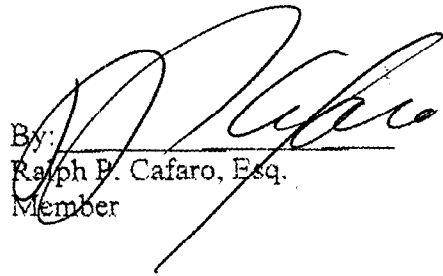
By: 
Ralph P. Cafaro, Esq.
Member

Dated: June 14, 2002

POWER OF ATTORNEY

The undersigned hereby appoints Mary A. Whiting, Esq., LAW OFFICES OF MARY A. WHITING, ESQ., 214 Slosson Avenue, Staten Island, New York 10314, its representatives to prosecute this proceeding with full power of substitution and revocation and to transact all business in the Patent and Trademark Office in connection therewith, and upon whom notice or processes in proceedings herein may be served.

LBSG, LLC


By: 
Ralph P. Cafaro, Esq.
Member

Dated: June 14, 2002

CERTIFICATE OF MAILING

I hereby certify that the **NOTICE OF OPPOSITION** with **DECLARATION** is being deposited by Federal Express Routing Number 834670506027 on this 18th day of June, 2002, addressed to the Patent and Trademark Office, Washington, D.C. 20231.

Dated: June 18, 2002


Mary A. Whiting, Esq.
Attorney for Opposer

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06-19-2002

U.S. Patent & TMOfr/TM Mail Rcpt Dt. #26

VIA FEDERAL EXPRESS

June 18, 2002

BOX TTAB FEE
Commissioner of Trademarks
2900 Crystal Drive
Arlington, Virginia 22202-3513

RE: Notice of Opposition
Opposer: LBSG, LLC
Applicant: LB Gardens, Inc.
In the Matter if Serial No.: 7632769

Dear Commissioner:

I enclose the following

- ◆ Check # 1467 for \$600
- ◆ Notice of Opposition (Exhibits A-D, and Exhibits 1-3) with (DUPLICATES)
 - ◆ Declaration
 - ◆ Power of Attorney
 - ◆ Certificate of Mailing Federal Express

If you need to correspond with me, please contact me at the above address or email immediately.

Respectfully submitted,

Mary A. Whiting
Mary A. Whiting, Esq.
Registered Patent Attorney 30,601
Attorney for Applicant

Encs:

02 JUL -2 AM 8:33

TO: MARY A. WHITING
FROM: U.S. PATENT & TRADEMARK OFFICE
SUBJECT: NOTICE OF OPPOSITION

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